

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 372

August 8, 1995, 7:14 p.m.  
Page S-11873 Temp. Record

## INTERIOR APPROPRIATIONS/Mining Moratorium

**SUBJECT:** Department of the Interior and Related Agencies Appropriations Bill for fiscal year 1996 . . . H.R. 1977.  
Bumpers motion to table the committee amendment on page 128, lines 16-21.

### ACTION: MOTION TO TABLE FAILED, 46-51

**SYNOPSIS:** As reported, H.R. 1977, the Department of the Interior and Related Agencies Appropriations Bill for fiscal year 1996, will provide \$12.053 billion in new budget authority, which is \$69 million more than the House-passed bill provided, \$1.76 billion less than the Administration requested, and 11 percent less than the fiscal year (FY) 1995 level.

**The committee amendment on page 128, lines 16-21,** would strike section 322. That section will forbid using funds from this Act to accept or process applications for a patent for any mining or mill site claim on federally controlled lands, and will forbid issuing a patent for any such claim.

During debate, Senator Bumpers moved to table the committee amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

NOTE: Two amendments were pending to the language proposed to be stricken. See vote No. 373.

**Those favoring** the motion to table contended:

For eight straight years we have been trying to reform Federal hardrock mining law. The House amendment would impose a moratorium on the current give-away of billions of dollars of worth of precious minerals on public lands. This moratorium, which we support, would give Congress time to stop this give-away by making companies pay the Federal Government a fair price for the minerals they extract. The Senate committee amendment, which we have moved to table, would strike the House amendment, allowing the abuses to continue. Also pending right now is a Bumpers amendment, to grandfather in some patent applications under the old rules. We think the Bumpers amendment is pretty generous to these companies. Because they filed their patents with the expectation that they would be able to get billions of dollars of worth of gold, platinum, and other minerals for free, the Bumpers

(See other side)

YEAS (46)			NAYS (51)			NOT VOTING (3)	
Republicans (8 or 15%)	Democrats (38 or 84%)		Republicans (44 or 85%)	Democrats (7 or 16%)		Republicans (2)	Democrats (1)
Coats	Akaka	Kerrey	Abraham	Hutchison	Baucus	Helms <sup>-2</sup>	Breaux <sup>-2</sup>
Cohen	Biden	Kerry	Ashcroft	Inhofe	Bingaman	Mack <sup>-2</sup>	
DeWine	Boxer	Kohl	Bennett	Kempthorne	Bryan		
Gregg	Bradley	Lautenberg	Bond	Kyl	Ford		
Jeffords	Bumpers	Leahy	Brown	Lott	Heflin		
Kassebaum	Byrd	Levin	Burns	Lugar	Inouye		
Roth	Conrad	Lieberman	Campbell	McCain	Reid		
Snowe	Daschle	Mikulski	Chafee	McConnell			
	Dodd	Moseley-Braun	Cochran	Murkowski			
	Dorgan	Moynihan	Coverdell	Nickles			
	Exon	Murray	Craig	Packwood			
	Feingold	Nunn	D'Amato	Pressler			
	Feinstein	Pell	Dole	Santorum			
	Glenn	Pryor	Domenici	Shelby			
	Graham	Robb	Faircloth	Simpson			
	Harkin	Rockefeller	Frist	Smith			
	Hollings	Sarbanes	Gorton	Specter			
	Johnston	Simon	Gramm	Stevens			
	Kennedy	Wellstone	Grams	Thomas			
			Grassley	Thompson			
			Hatch	Thurmond			
			Hatfield	Warner			

#### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

amendment would not change the rules on them in the middle of the game. However, it would not let new claims be filed using funds from this bill. It would thus set a one-year moratorium on new claims.

As the law now stands, anyone may patent Federal public lands for \$2.50 to \$5.00 per acre and begin mining. Little in the way of oversight or requirements that they restore the land once they finish mining exists. The result, predictably, is that numerous mining sites have ended up on the Superfund list of the worst hazardous waste sites in America. Further, no matter what the value of the minerals extracted, whether measured in the hundreds or billions of dollars, the United States does not get one penny. In some cases, people have received Federal mining patents and have not used the land for mining--at the price of \$2.50 to \$5 per acre, they have purchased some of the most valuable public real estate in America and built resorts, hotels, and the like, instead of mining it as they claimed they would.

Pending to the Bumpers amendment is a Reid substitute amendment that would pretend to enact a meaningful reform by requiring companies to pay a fair market value for the Federal lands they patent. However, the "fair market value" for which the Reid amendment would demand payment is only the surface value. Thus, if the surface value of an acre of land is \$100, even though that acre is sitting on \$10 billion worth of gold, the Reid amendment would let someone patent it for \$100. The Government would therefore give away \$10 billion for the princely sum of \$100. This proposal is not our idea of reform. According to the General Accounting Office, there are \$100 billion worth of hardrock minerals still left on federally owned land. The way the law is currently written, and the way the Reid amendment would leave matters, is the Federal Government will not get one cent from the sale of these minerals.

What is needed is a royalty requirement. Many States already have such a requirement for hardrock mining on their lands, and the Federal Government has such requirements for coal mining as well as oil and gas drilling. We have heard our colleagues' predictions of gloom and doom for the mining industry if we impose a royalty, and we find these predictions unbelievable. Other industries have had little difficulty paying royalties, and where royalties have existed, mining companies have been able to pay them without going out of business.

Our colleagues tell us they do not want to jeopardize jobs in the West. What they fail to mention is that in many cases, these are jobs provided by foreign employers. Foreign companies are coming into the United States, taking its minerals free-of-charge, and polluting its environment. This situation is completely untenable.

True reform is needed, not the "business-as-usual" reform provided by the Reid amendment. We should table the committee amendment, table the Reid amendment, and pass the Bumpers amendment as introduced. Before we do anything else, we should pass a moratorium to keep this problem from getting any worse.

**Those opposing the motion to table contended:**

The House amendment is straightforward. It would impose a moratorium on an industry that a huge portion of the economy depends until such time as Congress comes to a "solution" on how to raise taxes on it. The Bumpers amendment would "generously" grandfather in the processing of some of the patents that have already been filed, but the Senator from Arkansas is not unaware of the shenanigans that Secretary Babbitt has been engaged in to subvert the current law. The amendment would have no actual effect. Secretary Babbitt, by creating a convoluted new administrative process, has already made it impossible to patent land for mining. The House amendment is nothing but a political stunt, and the Bumpers amendment is window dressing on top of it. Striking either will not solve the problem. The only solution is to approve the Reid amendment, which would enact meaningful reform and which is constructed so as to force the Secretary of Interior to administer the law instead of subvert it.

We have listened to our colleague from Arkansas inaccurately describe this issue for many years, and, though we are tired of correcting him, we feel we must if for no other reason than to acquaint our new colleagues with the facts. We will start with current mining law. Time after time, we have heard Senators make the deliberately misleading statement that public lands are being given away for \$2.50 to \$5.00 per acre. The truth of this issue is that the cost of a patent has nothing to do with the cost charged per acre. Before the Federal Government will issue a mining patent, it requires proof that the land can be commercially mined. On average, the cost of providing such proof is more than \$200,000, and is often several times this amount. Our colleagues assertion that a patent on 20 acres can be had for \$100, when the true cost is actually hundreds of thousands of dollars, is baseless. One may as well assert that the Government gives away cars for the price of a \$20 registration fee.

Once a patent has been issued the costs have only begun. Mining is an extremely capital intensive business. For example, a new mine that recently opened in California, the Viceroy mine, cost \$65 million before digging even began. At a mine in Nevada, the American Barrett mine, they have \$150 million invested in an oxygen plant, \$200 million in mobile equipment (including 42 trucks that cost \$1.4 million each) and an autoclave that cost \$84 million. Each month, this mine's bill for tires alone is \$800,000. Sometimes these mines turn out to be nothing more than expensive holes. A mine in Nevada last week shut down after spending \$33 million in a fruitless attempt to extract commercial quantities of minerals.

Tremendous amounts of funds are involved, driving numerous industries besides the mining industry. Senators should be aware that mining directly employs 150,000 Americans, and at least 750,000 jobs are indirectly dependent on the health of this industry. The minerals they mine are absolutely essential to every American. Every car contains approximately 15 different minerals, every

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television contains around 35, and every telephone has around 40. The question is not whether there will be mining, but where that mining will be. Our colleagues may be Luddites who are willing to crawl back into caves, but the American people are not going to give up the conveniences of modern life.

The next salient fact which our colleagues fail to mention is that mines do not stay in operation for a long time. If no new patents are issued, most American mines will be depleted in about 7 years. In the first 2 years of Secretary Babbitt's tenure at the Department of Interior, not one single permit was issued without a court order requiring that it be issued. Secretary Babbitt has now reinvented Government by requiring the following process to get a permit: first, an application must be reviewed by the local Bureau of Land Management (BLM) staff; second, it must be reviewed by the BLM State director; third, it must be reviewed by the regional solicitor; fourth, it must be reviewed by the Interior Department solicitor; fifth, it must be reviewed by the BLM director; sixth, it must be reviewed by the Assistant Secretary of the Interior; seventh, it must be reviewed by the Secretary himself; eighth, it must again be reviewed by the BLM director; and ninth, it must again be reviewed by the State BLM director. If a patent application makes it through this cycle, it is then subject to a mineral examination by the BLM. Secretary Babbitt informed us at breakfast the other day that the Department cannot really afford to hire anyone to help the one employee in Nevada who is detailed, part-time, to make examinations. Of course, under his tenure, the Department has been able to bloat the personal retinue of bureaucrats who work in the Secretary's office. Federal judges throughout the United States have said it is shameful what Secretary Babbitt is doing with patents. Nevertheless, he is getting away with it. Last year, the industry recorded a 13-percent decline. Many companies are moving to Latin America where mineral production has more than doubled in the last year. Other countries also are seeing a boom in mining activities. A moratorium is not a short reprieve while the "problem" is fixed. It is an effort to shut down the mining industry on public lands in America entirely.

We urge Senators to try to look with a little reason at the argument that we are just giving away billions of dollars worth of minerals. First, we point out that both Canada and Mexico passed royalty laws of the type advocated by the Senator from Arkansas. Both saw their mining industries collapse, and they reformed their laws. Second, if this really were such a lucrative deal, then why after 150 years have not more claims been filed? Are people really reluctant to take billions of dollars for free from the Federal Government? The free market moves where it is profitable for it to move--if the Government were really giving away minerals the way our colleagues describe there would not have been anything left to give away long ago. Most countries do not impose royalties or other taxes on companies for mining; instead, they subsidize it. If other countries subsidize mining, and we impose an 8 percent royalty tax, we ask our colleagues, what do they suppose will happen? Why, we will lose mining jobs. We will lose a tax base. We will pay unemployment benefits. We will depend on foreign countries for raw materials, including for raw materials we need for national security reasons.

During the long years of debate on this issue our colleagues have come up with one reasonable argument. They have said that it should not be possible for anyone to get a patent for a mine and then use it for purposes other than mining. We wholeheartedly agree, and for years we have tried to enact such a requirement. Our colleagues have blocked our efforts. They do not want this issue to die. We are trying again with the Reid amendment. One part of the Reid amendment would nullify a patent if anyone tried using the land for any purpose other than mining. The argument that our colleagues make that sounds reasonable is that no one should be able to get land for \$2.50 an acre. As we have already explained, no one gets land until they have invested, on average, hundreds of thousands of dollars proving it has minerals. To prevent the endless demagoguing on this issue, the Reid amendment would instead require that patent applicants pay fair market value for the surface value of the land. The third part of the Reid amendment would force the Secretary of the Interior to process applications instead of deliberately tying them up in paperwork. To address his claimed personnel shortage problem, the amendment would let patent applicants hire independent contractors to do the job that Interior is supposed to do but cannot because it is so "under-staffed."

Our colleagues are not interested in accepting the Reid amendment, nor are they interested in accepting any of the compromise proposals that are under discussion. Instead, all they can clamor for is a continuation of the now de facto 2.5 year moratorium, which is destroying the industry. The destruction of the domestic mining industry is a result that is favored by many environmental fanatics. They imagine that mines still operate the way they did 40 or 50 years ago, before anyone had any environmental awareness. In those days, mining companies were undeniably guilty of polluting the environment, particularly with mercury. Those days are gone. Strict environmental laws now control mining. Before the Federal Government will even issue a patent, environmental impact statements must be approved (examining possible effects on air quality, water quality, solid waste, fisheries, wildlife, plant habitat, protection of monuments, and archeological concerns) and reclamation plans must be developed. In one instance, mining was not allowed to go forward until the mining company agreed to transplant a forest, tree by tree, before digging, and after the minerals were extracted, to fill the hole and move the trees back.

We favor the committee amendment to strike the House language, but it is not enough. If we are going to save the mining industry, we are going to have to pass the Reid amendment. We urge Senators to vote against the motion to table the committee amendment to demonstrate that they do not support the moratorium, but we then urge them to join us in supporting the Reid amendment, which would not only show our opposition to the moratorium, it would do something to stop it.